



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**[FMCSA Dockets No. FMCSA-2008-0078, FMCSA-2011-0376, FMCSA-2011-0084, FMCSA-2009-0010]**

**Applications for Exemption: Commercial Driver's License (CDL) and Hours-of-Service (HOS) of Drivers**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final dispositions.

**SUMMARY:** FMCSA announces denials of several separate applications for exemption from certain provisions of the Federal Motor Carrier Safety Regulations (FMCSRs) submitted by five motor carriers on behalf of their commercial motor vehicle (CMV) drivers. The Agency reviewed each application and any public comments received, and rendered each decision based upon the merits of the application.

**DATES:** FMCSA denied the application for exemption of Rotel North American Tours, Inc. (Rotel) on May 21, 2012, and of Underwater Construction Corporation (Underwater) on May 29, 2012. On June 4, 2012, FMCSA denied the applications for exemption of Western Pilot Service (Western), Redding Air Service, Inc. (Redding) and Guardian Helicopters, Inc. (Guardian).

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas Yager, Chief, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations; Telephone 202-366-4325, E-mail: [MCPSPD@dot.gov](mailto:MCPSPD@dot.gov).

**SUPPLEMENTARY INFORMATION:**

## **Dockets**

You may read background documents or comments filed to the dockets of any of these applications for exemption by going to [www.regulations.gov](http://www.regulations.gov) at any time, or to Room W12-140, DOT Building, 1200 New Jersey Ave., SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

## **Background**

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant an exemption from certain Federal Motor Carrier Safety Regulations (FMCSRs) for a maximum 2-year period if it finds “such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.” This standard must be satisfied before the Agency can grant an exemption [49 CFR 381.305(a)]. If granted, the exemption may be renewed. An applicant is advised in the regulations to carefully review the FMCSRs to determine if there are any practical alternatives that would allow it to conduct its motor carrier operations without the exemption [49 CFR 381.305(b)]. The application must include a written assessment of the safety impacts the exemption may have. It must also describe how the applicant would ensure that it could achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the regulation [49 CFR 381.310(c)(4) and (5)].

FMCSA must publish a notice of each exemption application in the **Federal Register** [49 CFR 381.315(a)]. The Agency must invite the public to comment on the merits of the application, and provide the public an opportunity to inspect the application, the safety assessment, and all other information relevant to the application. The Agency

must publish a notice announcing its decision on the applications. A notice is required for granting an exemption but the Agency may issue denial letters with the publication of a notice at a later date, as is the case with the denials announced today.

### **Applications for Exemption**

Rotel, Underwater, Western, Guardian and Redding filed applications for exemption from certain FMCSRs on behalf of their CMV drivers. Guardian and Redding, under common ownership, filed jointly. FMCSA published **Federal Register** notices requesting public comment on each application. Each notice established a docket to provide the public an opportunity to inspect the application and other docketed information, such as the comments of others submitted to the docket. Table 1 provides, for each application, the docket number where the complete record can be examined, and the FMCSR from which exemption was sought.

TABLE 1

APPLICANT	DOCKET NUMBER	EXEMPTION SOUGHT
Rotel	FMCSA-2008-0078	CMV drivers must possess a commercial driver's license. 49 CFR part 383
Underwater	FMCSA-2011-0376	CMV drivers must maintain a record of duty status. 49 CFR 395.8
Western Pilot	FMCSA-2011-0084	CMV drivers may not drive a CMV after accumulating 70 hours of "on duty" time in an 8-day period. 49 CFR 395.3(b)(2)
Guardian and Redding (joint application)	FMCSA-2009-0010	

**Rotel**

Rotel provides motorcoach tours of the United States for residents of Germany, and, for business reasons, prefers to employ residents of Germany to drive the motorcoaches. It sought renewal of an exemption from the commercial driver's license (CDL) requirements for 22 of its drivers who do not hold a CDL issued by one of the States, as required by 49 CFR part 383. On May 21, 2012, FMCSA denied Rotel's application for exemption renewal because it found that the applicant had not pursued all practical alternatives available to it, including hiring U.S. CDL drivers. A copy of the denial letter has been placed in the docket identified in Table 1.

**Underwater**

Underwater sought exemption for 165 of its CMV drivers from a provision of the hours-of-service (HOS) rules (49 CFR part 395) requiring CMV drivers to maintain a record of duty status (RODS) on board the CMV they are operating (49 CFR 395.8). However, operators of "utility service vehicles" (USVs) are exempt from all the HOS rules [49 CFR 395.1(n)], including the RODS requirement. Underwater stated that its drivers operate USVs for all but a portion of their overall driving time in a given week. The rest of their driving involves operation of CMVs that do not qualify as USVs; at these times, the Underwater drivers must maintain a RODS on board the CMV. Underwater sought exemption from the RODS requirement of 49 CFR 395.8 for its drivers at all times, so that they would always be exempt from the RODS requirement, even when not operating a USV. On May 29, 2012, FMCSA denied Underwater's application for exemption because Underwater failed to demonstrate how it would achieve the level of safety equivalent to, or greater than, the level of safety that would be

obtained by complying with the RODS requirement. A copy of the denial letter has been placed in the docket identified in Table 1.

### **Western Pilot Service**

Western sought exemption for 15 CMV drivers who transport aviation fuel for aircraft engaged in firefighting operations in remote areas. Western asked for exemption from the provision of the HOS rule that limits CMV drivers to a maximum of 70 on-duty hours in any period of 8 consecutive days [49 CFR 395.3(b)(2)]. When the 70-hour limit is reached, this provision bars CMV drivers from operating a CMV on a public highway until they attain the amount of off-duty time prescribed by the HOS regulations. Western proposed that it be given an exemption that would permit its CMV drivers to satisfy the off-duty requirement by being off duty for 2 consecutive days in any 14-day period.

Thus, Western drivers could be eligible to drive a CMV when their hours on duty exceeded 70 hours in the most recent 8-day period. Western sought this exemption so that the work schedules of its CMV drivers would more closely correspond with the work schedules of its aircraft pilots. FMCSA reviewed the application and the two public comments submitted. On June 4, 2012, FMCSA concluded that Western had not demonstrated how it would achieve a level of safety equivalent to or greater than the level of safety that would be obtained by complying with the limit of 70 on-duty hours in 8 days. A copy of the denial letter has been placed in the docket identified in Table 1.

### **Redding Air Service/Guardian Helicopters**

These two entities, owned by the same individual, filed a joint application seeking relief for 20 CMV drivers who transport jet fuel in tank CMVs in support of aircraft engaged in firefighting operations. The applicants asked for exemption from the HOS

rule that prohibits a driver from operating a CMV after accumulating 70 on-duty hours in an 8-day period [§ 395.3(b)(2)]. The applicant sought the exemption so that the work schedules of its ground support employees would more closely correspond to the work schedules of its aircraft employees. On June 4, 2012, the Agency concluded that the applicant failed to explain how it would ensure that drivers operating tank vehicles laden with hazardous materials beyond the 70-hour/8-day limit of section 395.3(b)(2) would achieve a level of safety equivalent to, or greater than, the level that would be achieved by compliance with that limitation. Section 381.305(a) requires that the Agency be satisfied that this standard would be met before granting an exemption from the FMCSRs. A copy of the denial letter has been placed in the docket identified in Table 1.

### **Conclusion**

FMCSA reviewed each application and all public comments received. The Agency concluded in each case that the application for exemption lacked sufficient merit to justify the exemption sought. Accordingly, FMCSA denied the applications for exemption of Rotel, Underwater, Western, Redding and Guardian.

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Larry W. Minor  
Associate Administrator for Policy

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